BLANK
PAGE

BLANK
PAGE

In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 1157

MARY KOVACS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Taxpayer owned two life insurance policies with a combined face value of $50,000, naming petitioner, his mother, as primary beneficiary and his children as contingent beneficiaries (I R. 111–112; Pet. App. A2). On January 13, 1962, the date of taxpayer's death, the policies had a combined cash surrender value of $7,402.92. Having filed liens for unpaid taxes [1] against the policies and taxpayer's other property prior to his death, the United States brought this action to foreclose its liens on the policies' cash sur-

[1] The government claimed that $132,838.21 was due from taxpayer individually, $90,369.07 was due from taxpayer and his wife Edith jointly, and $9,654.66 was due from Edith individually (Pet. App. A2).

render value. The defendants in the action were petitioner, taxpayer's wife Edith (as legal guardian of the minor contingent beneficiaries) and the insurer.

Prior to this action, Edith was named administratrix of taxpayer's estate, and the government filed a claim against the estate for the unpaid taxes referred to in note 1, *supra* (Pet. App. A2–A3). Pursuant to stipulations entered into between the United States and Edith, individually and as administratrix, she purchased certain real and personal property from the estate free of tax liens for a total of $1,987,020.59, paying $37,625 cash and assuming loans and mortgages due on the real property of $1,949,395.59 (I R. 39–45). The net cash proceeds were applied against the joint tax liabilities of Edith and taxpayer. As a result, Edith's tax liability was reduced and the estate was left with insufficient funds to pay taxpayer's separate liability (Pet. App. A3). After these arrangements were made, petitioner sued in the Los Angeles Superior Court to remove Edith as administratrix, alleging that she had mismanaged the estate by failing to pay all of the taxpayer's tax debt, thereby leaving in effect the liens against the cash surrender value of the insurance of which petitioner is beneficiary (Pet. App. A3).[2]

---

[2] The trial court dismissed the action on the theory that petitioner had no interest in the management of the estate, but the appellate court reversed, holding that petitioner had a right to secure payment of the taxes out of the estate, if that were possible, to protect her insurance benefits. *Estate of Kovacs*, 227 Cal. App. 2d 308. On remand, the State trial court again dismissed petitioner's suit, this time on the ground that the action was rendered moot by the summary judgment in favor of the government in the instant federal court suit.

In the present case—the government's suit to foreclose its liens—the insurer and the guardian disclaimed any interest. Petitioner moved to dismiss on the grounds that the estate was an indispensable party and that the government must prove either that the estate is insolvent or that it has exhausted its remedies against the estate before it can collect the taxes out of the cash surrender value of the policies. The court denied her motion and, instead, granted the government's motion for summary judgment (I R. 84–87, 120). The court of appeals affirmed, holding that the United States, as a secured creditor, had a right to foreclose its liens against any property of the taxpayer, whether in the estate or in the hands of other persons. The court noted that whether any adjustment should be made between petitioner and the estate is a matter to be dealt with in the State proceedings then pending.[3]

The decision below is clearly correct and does not call for further review by this Court. The government's right to foreclose its lien on the cash surrender value of taxpayer's policies in the hands of petitioner is well established. In *United States* v. *Bess*, 357

[3] Petitioner filed an appeal from the State trial court's decision dismissing her complaint as moot in light of the action of the federal district court, but has now abandoned her appeal (Pet. 7). It would appear that, in light of the previous ruling of the State appellate court that petitioner was an interested party in the estate and was entitled to seek its solvent administration in order to avoid the imminent tax collection out of the cash value of the policies in question, she probably would have remained an interested party after that tax collection was effected, for purposes of securing reimbursement from the estate; and it therefore is far from clear, as petitioner now contends (Pet. 7), that such appeal would have been fruitless.

U.S. 51, this Court held that a lien for federal taxes under Section 3670 of the Internal Revenue Code of 1939 (predecessor of Section 6321 of the Internal Revenue Code of 1954) attaches to the cash surrender value of an insurance policy where the taxpayer has retained the right to receive the cash value during his lifetime. In such a situation, the cash surrender value passes to the beneficiary burdened with the tax lien. There are no cases in conflict with this principle and there is no sound reason to reconsider it, as petitioner requests.

The decision in *Bess* was based upon the nature of the property interest to which the lien attached and in no way turned upon the fact that the taxpayer's estate was insolvent. The United States is entitled to recover unpaid taxes from any property of the taxpayer. As a senior lienor, the government may not be required to select one holder of the taxpayer's property over another for recovery on its lien even though, as between them, one is liable to the other. *Phillips* v. *Commissioner,* 283 U.S. 589; *Cash* v. *Campbell,* 346 F. 2d 670 (C.A. 5).

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

THURGOOD MARSHALL,
Solicitor General.
MITCHELL ROGOVIN,
Assistant Attorney General.
JOSEPH KOVNER,
ANTHONY ZELL ROISMAN,
Attorneys.

APRIL 1966.